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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/062,197	02/01/2002	Lan Bo Chen	00530-097001/ 731.02	9895
26161	7590	03/22/2004	EXAMINER	
FISH & RICHARDSON PC 225 FRANKLIN ST BOSTON, MA 02110			MAHATAN, CHANNING	
			ART UNIT	PAPER NUMBER

1631

DATE MAILED: 03/22/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/062,197	Applicant(s) CHEN ET AL.	
	Examiner Channing S Mahatan	Art Unit 1631	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-28 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☐ Claim(s) ____ is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☒ Claim(s) 1-28 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____. |

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Restriction/Election Requirement

Restriction to one of the following inventions is required under 35 U.S.C. § 121:

- I. Claims 1-7, drawn to a method of detecting the presence or absence of a target body in a specimen, classified in class 435, subclass 4.
- II. Claim 8, drawn to a detection system, classified in class 318, subclass 640.
- III. Claims 9-13 and 23-28, drawn to a method for analyzing for biological agent cells in a specimen field of cells, classified in class 702, subclass 19.
- IV. Claims 15, 19, 1, and 2, drawn to a method for screening a transplantation organ for the presence or absence of a target body, classified in class 435, subclass 1.1.
- V. Claims 16, 19, 1, and 2, drawn to a method for assessing the efficacy of a drug candidate against a disease or disease symptom in a subject, classified in class 424, subclass 9.1.
- VI. Claims 17, 19, 1, and 2, drawn to a method for screening a blood sample for the presence or absence of a target body, classified in class 435, subclass 128.
- VII. Claims 18, 19, 1, and 2, drawn to a method for screening a fluid sample for the presence or absence of a target body, classified in class 435, subclass 6.
- VIII. Claims 20-22, drawn to a method of screening for the presence of bacteria, classified in class 435, subclass 7.32.

The inventions are distinct, each from the other because:

Inventions I-VIII are unrelated. Inventions are unrelated if it can be shown that they are not disclosed as capable of use together and they have different modes of operation, different functions, or different effects (M.P.E.P. § 806.04, M.P.E.P. § 808.01). In the instant case the

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different inventions are directed to methods and a system having different functions, different effects, and different modes of operation. The function/mode of operation of Group I is to detect a target body in a specimen. The function/mode of operation of Group II is a system comprising a stage, detector, light source, camera, and computer. The function/mode of operation of Group III is to analyze biological agent cells. The function/mode of operation of Group IV is to screen a transplant organ donor. The function/mode of operation of Group V is to assess efficacy of a drug candidate. The function/mode of operation of Group VI is to screen a blood sample. The function/mode of operation of Group VII is to screen a fluid sample. The function/mode of operation of Group VIII is to screen for bacteria. It should be noted Groups IV-VII appear to require additional steps as implied by the preamble (i.e. transplant organ donor screening, efficacy of the drug candidate, etc). Thus, Groups I-VIII have different functions, different effects, and different modes of operation.

Because these inventions are distinct for the reasons given above, have acquired a separate status in the art because of their recognized divergent subject matter, and the search for each Group would require a non-coextensive non-patent literature search (the search required for one group is not required for any of the other groups), restriction for examination purposes as indicated is proper.

Applicants are advised that the response to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 C.F.R. § 1.143).

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INVENTORSHIP AMENDMENT

Applicants are reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 C.F.R. § 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a petition under 37 C.F.R. § 1.48(b) and by the fee required under 37 C.F.R. § 1.17(i).

EXAMINER INFORMATION

Papers related to this application may be submitted to Technical Center 1600 by facsimile transmission. Papers should be faxed to Technical Center 1600 via the PTO Fax Center located in Crystal Mall 1. The faxing of such papers must conform with the notices published in the Official Gazette, 1096 OG 30 (November 15, 1988), 1156 OG 61 (November 16, 1993), and 1157 OG 94 (December 28, 1993) (See 37 C.F.R. § 1.6(d)). The CM1 Fax Center number is either (703) 872-9306.

Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Channing S. Mahatan whose telephone number is (571) 272-0717. The Examiner can normally be reached on M-F (8:30-5:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael P. Woodward, Ph.D., can be reached on (571) 272-0722.

Any inquiry of a general nature or relating to the status of this application should be directed to Legal Instruments Examiner, Tina M. Plunkett, whose telephone number is (571) 272-0549 or to the Technical Center receptionist whose telephone number is (703) 308-0196.

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Date:

Marianne P. Allen

MARIANNE P. ALLEN
PRIMARY EXAMINER

3/18/04

Examiner Initials:

AM 1631